

3 FAM 8200 Appendix A

OLD 3 FAM 123 METHODS OF OVERSEAS EMPLOYMENT

(TL:PER-306; 11-08-1995)

At this time the new material which would be contained in this subchapter have not been cleared for issuance. Accordingly the old 3 FAM version, which is the current version in force is issued as Appendix A to this chapter. It retains its original numbering. The most recent issuance of this material was done under TL:PER-91, dated 5-2-88.

3 FAM 123 METHODS OF OVERSEAS EMPLOYMENT

3 FAM 123.1 Purpose

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

The purpose of this regulation is to (1) provide posts with the managerial flexibility necessary to meet their staffing requirements (2) provide maximum employment opportunities for American family members at overseas posts consistent with sound organizational management and (3) protect and safeguard the integrity of the Foreign Service National career system.

3 FAM 123.2 General

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

This regulation provides policy and procedures governing the different types of appointments of American family members and U.S. citizen residents to any overseas vacancies that do not interfere with the career progression of either American Foreign Service members or Foreign Service National personnel. To provide maximum employment opportunities, qualified American family members will be given priority consideration over equally qualified U.S. citizen residents.

AID only: This regulation authorizes only the appointments of American family members to AID FSN/AFM positions. Appointments to AID resident-hire positions must be made under the authorities and guidelines outlined in AID Handbook 25, Ch. 34, Resident-Hire Appointments and Employment.

3 FAM 123.3 Definitions

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. "American family member" (AFM) or "dependent" means a U.S. citizen spouse or dependent (as defined in section 6 FAM 117k) of a U.S. Federal Government employee or U.S. military service member, either residing with the sponsor (see paragraph k. below) or residing overseas apart from the sponsor solely because the employing agency does not authorize family members to reside at the sponsor's current post of assignment. AFMs who voluntarily reside overseas at posts other than the sponsor's post of assignment are considered U.S. citizen residents for purposes of employment under this regulation.

b. "Break in service" means the time when an employee is no longer on the payroll of an agency. For the purpose of computing creditable service for benefits, leave accrual or service computation date, a separation of four or more calendar days is a break in service and the days of separation are subtracted from the employee's total creditable service. For all other purposes, a break in service occurs whenever a termination action is processed, e.g., Resignation, Retirement, Removal or Termination, even if the employee is appointed to a different position the next day.

c. "Bureau" means the regional and functional bureaus and other special interest offices which control overseas position complements; and the office in each agency with delegated authority to process appointments as defined in section 3 FAM 123.5.

d. "Conversion" means the nature of action used on a personnel action to move an employee without a break in service from one personnel appointment to another personnel appointment in the same agency. For example, conversions are used to accomplish movement from one grade level to another, from one position description to another and from one type of appointment (temporary) to another (limited). Movement from a contract to a personnel appointment, even without a break in service, is not a conversion; it is a new appointment.

e. "Equivalent increase" means an increase or increases in the employee's rate of basic pay equal to or greater than one step increase.

f. "Extension" means increasing the length of an appointment when there is no change other than the not-to-exceed date. If a change is made to the class, pay plan, position title, position number or appointment authority, a conversion action must be processed, even if there is not a break in service.

g. "FSN/AFM position (Foreign Service National/American Family Member)" means a vacant FSN position which has been designated for occupancy by either a FSN or AFM employee. A FSN/AFM position is funded from the post's operating expense allotment.

h. "Limited noncareer appointment" means a Foreign Service noncareer appointment to a vacant Foreign Service permanent position with a specific time limitation of more than one year and less than five years. The Foreign Service position is funded from the central salaries account. Employees on these appointments are eligible for those allowances and differentials for which they qualify.

i. "PIT" means a Part-time or Intermittent work schedule or a Temporary appointment. An employee may work full-time, part-time or intermittently on a temporary appointment. PIT refers to the type of appointment and/or the type of position. A PIT position is funded from a post's operating expense allotment.

j. "Post" means overseas establishments of the foreign affairs agencies.

k. "Sponsor" means the U.S. Federal Government employee or U.S. military service member upon whose employment the AFMs eligibility for appointment is based.

l. "Temporary appointment" means an appointment not to exceed one year. Such an appointment may be extended in increments of one year or less. Residents may not serve more than five years on a temporary appointment to a PIT position; AFMs may serve indefinitely in a PIT position and, except in unusual circumstances, for a maximum of two years in an FSN/AFM position.

m. "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that make up an employee's regularly scheduled administrative workweek. "Tour of duty" under this regulation is not to be confused with the "tour of duty" of career Foreign Service employees which refers to the total length of a particular assignment, usually two or three years.

n. "U.S. citizen resident" or "resident" means a U.S. citizen residing abroad who is not an American family member. See section 3 FAM 123.3(a).

o. "Work Schedule" means the time basis on which an employee is paid, either full-time, part-time or intermittent.

3 FAM 123.4 Authority

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Sections 301I, 309, 311, 403 and 407 of the Foreign Service Act of 1980, as amended, grant the authority to appoint and pay the basic salaries of employees covered by this regulation. Employees appointed under this regulation are covered by the same regulations, rules and procedures that govern all other Foreign Service employees, unless specifically excluded in other pertinent sections of the 3 FAM or superseded by this regulation.

3 FAM 123.5 Agency Program Administration

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/Commerce/Peace Corps)

Within each agency, the following offices administer the various aspects of the overseas employment program. Agency-specific questions and correspondence should be directed to these offices.

3 FAM 123.5-1 State

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/Commerce/Peace Corps)

(A) Appointments

a. The bureaus authorize the temporary appointment of employees to overseas positions under their jurisdiction, provided such appointments are effected in accordance with the employment procedures contained in this regulation.

b. The Office of Foreign Service Career Development and Assignments (PER/FCA) approves all limited noncareer appointments to Foreign Service permanent positions.

(B) Position Classification/Designation

a. PIT positions: The Office of Position and Pay Management (PER/PPM) classifies all positions at the FP-07 level and above. Bureaus may classify positions at the FP-08 and FP-09 level and positions within the Extended Foreign Service Schedule, FP-AA through FP-EE.

b. FSN/AFM positions: The Office of Foreign Service National Personnel (PER/FSN) at the request of the bureaus approves the designation of FSN positions as FSN/AFM. PER/FSN coordinates with PER/PPM to determine the appropriate FSN/AFM class level.

(C) Security Clearances

The bureau forwards the requests for clearances along with all completed forms received from the post to the Bureau of Diplomatic Security (DS), which is responsible for the investigation, issuance, denial, revocation or reduction of security clearances. The bureau, which is advised by DS when the security processing is complete, informs the post when the security clearance is granted.

(D) Policy

The Office of Employee Relations (PER/ER) monitors the administration of the overseas family employment program for compliance, determines the effectiveness and modifies the program as needed to meet changing organizational needs, legal requirements and personnel practices. PER/ER provides policy guidance and program coordination in all areas except security matters, classification and compensation management. PER/ER approves all requests for Superior Qualifications Rate.

3 FAM 123.5-2 AID

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/Commerce/Peace Corps)

a. The Office of Personnel Management administers appointments, classification and policy.

b. The Office of Security processes security clearance requests.

3 FAM 123.5-3 USIA

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/Commerce/Peace Corps)

(A) Appointments and Security Clearances

The Director of the appropriate Area Office or the Office of Personnel, Voice of America for appointments and pay setting including superior qualifications rate. The Office of Security authorizes security clearances.

(B) Classification and Pay Setting

Office of Personnel, Domestic Personnel Division or the Office of
Personnel, Voice of America.

(C) Policy

The Office of Personnel, Policies and Services Staff or the Office of Personnel, Foreign and Domestic Policy Staff, Voice of America, as appropriate.

3 FAM 123.5-4 Commerce

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/Commerce/Peace Corps)

The Office of Foreign Service Personnel, U.S. and Foreign Commercial Service administers all program areas. See U.S. and F.C.S. Operations Manual.

3 FAM 123.5-5 Agriculture

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/Commerce/Peace Corps)

The Chief, Foreign Service Operations of the Foreign Agricultural Service or Chief, Foreign Programs Support Staff, Animal and Plant Health Inspection Service administers all program areas.

3 FAM 123.5-6 Peace Corps

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/Commerce/Peace Corps)

The Director, Office of Personnel Policy and Operations administers all program areas.

3 FAM 123.6 Types of Appointments

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/Commerce/Peace Corps)

Under this regulation, the following types of appointments may be used to employ AFMs and residents at overseas posts:

a. Temporary appointments not to exceed one year to PIT positions. Appointments may be extended indefinitely for an AFM; for a maximum of five years for a resident.

b. Temporary appointments not to exceed one year to FSN/AFM positions (AFMs only). Appointments may be extended for a maximum of two years. Posts may request authorization from the bureaus for an additional one-year extension in unusual circumstances.

c. State and Commerce only: Limited noncareer appointments, more than one year but less than five, to a permanent Foreign Service position. Appointments may be extended up to a maximum of five years. The conditions of employment and benefits differ from those of a temporary appointment.

3 FAM 123.7 Eligibility for Appointment

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. American family members may be appointed to:

(1) PIT positions on temporary appointments, which may be extended indefinitely, subject to appropriate approval.

(2) FSN/AFM positions on temporary appointments which may be extended for a maximum of two years, subject to appropriate approval. Posts may request authorization from the bureaus for an additional one-year extension in unusual circumstances.

(3) State and Commerce only: Foreign Service permanent positions on limited noncareer appointments which may be extended, subject to appropriate approval, for a total period not to exceed five years.

Persons who no longer qualify as AFMs because of age or marital changes become ineligible for appointment to an FSN/AFM position. They may, however, be hired as a U.S. citizen resident in a PIT position under the following section. See also section 3 FAM 123.8-6.

b. U.S. citizen residents may be appointed to:

(1) PIT positions on temporary appointments which may be extended, subject to appropriate approval, for a total period not to exceed five years or

(2) State and Commerce only: Foreign Service permanent positions on limited noncareer appointments which may be extended, subject to appropriate approval, for a total period not to exceed five years.

U.S. citizen dependents of U.S. government contractors are considered U.S. citizen residents under this regulation. This means a spouse or dependent of a USG contractor is not eligible for an FSN/AFM appointment.

c. The minimum appointment age is 18, except for high school or equivalent secondary school graduates; then the minimum age is 16.

d. Non-U.S. citizen dependents of U.S. Government employees or U.S. military service members are not eligible for appointments under section 3 FAM 123 or for security clearances under any circumstances. Such dependents may be appointed under the Foreign Service National program (see section 3 FAM 920).

3 FAM 123.8 Pre-employment Procedures for Temporary Appointments

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Prior to appointing an employee, posts must ensure that the following requirements have been satisfied. For additional procedural guidance, posts should consult either the agency handbook or program administrator identified in section 3 FAM 123.5.

3 FAM 123.8-1 Position Allocation/Designation

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Position allocation, FTE allotments and salary budgets are managed differently by each bureau. Posts should follow appropriate bureau guidelines.

a. PIT positions: Posts request authorization from the bureau to abolish, establish, reprogram or maintain positions within their FTE and position allocations.

b. FSN/AFM positions: Posts request authorization from the bureau to designate a FSN position as FSN/AFM. Under no circumstances may a FSN be separated from employment to appoint an AFM. The post request must include a justification that the position (1) does not require an FSN incumbent for continuity purposes and (2) is not part of an established progressive career ladder for the FSN workforce.

State only: Bureaus must secure the concurrence of the Office of Foreign Service National Personnel (PER/FSN) before an FSN/AFM position designation may be authorized. (See section 3 FAM 123.5-1(B)b.

3 FAM 123.8-2 Position Classification and Compensation

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. Every position must have a written and properly classified position description. The position description should include such information as the duties performed, qualifications required and supervisory controls. Each employee must receive a copy of the position description and a copy must be inserted in the Official Personnel Folder (OPF).

State only: Standard Temporary Position Descriptions (STPD) have been written and classified by PER/PPM for most of the routine PIT and FSM/AFM positions. The STPDs must be used unless the duties of a position are so different that a unique position description is required.

b. Positions are classified on either the Foreign Service Schedule or the Extended Foreign Service Schedule AA-EE. For those positions where the duties and responsibilities are of a more routine nature than would normally be performed by Foreign Service members, the Extended Foreign Service Schedule is the appropriate schedule.

c. **Uniform except USDA/FAS:** The Extended Schedule has five class levels (AA, BB, CC, DD, and EE) with five steps at each class level. Classes AA through DD, steps one through five, correspond directly with the General Schedule grades GS-4 through GS-01, steps one through five, respectively. Class EE is linked to the U.S. minimum wage rate at step one and has five steps. See section 4 FAM 545 for actual salary rates.

USDA/FAS only: USDA/FAS uses a pay plan designated for all positions on the Foreign Service and Extended Foreign Service Schedule. The Extended Schedule has four classes at the FP-010, 11, 12 and 13 levels which correspond directly with the General Schedule grades 4, 3, 2, and 1 respectively. USDA does not use a level below grade 1.

d. Position descriptions must be written and classified prior to announcing or recruiting for a vacancy.

e. The appropriate pay plan designator for positions on the Foreign Service Schedule and Extended Foreign Service Schedule is determined by the type of position to which an employee is appointed:

(1) FP is used for appointments to PIT and vacant Foreign Service permanent positions, regardless of the Schedule, e.g., FP-06, FP-09, FP-AA, FP-CC, etc.

(2) AF is used for appointments to FSN/AFM positions classified on either Schedule, e.g., AF-06, AF-09, AF-AA, AF-CC, etc.

3 FAM 123.8-3 Job Announcement

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. To provide maximum employment opportunities for AFMs, vacancy announcements may exclude residents from consideration for employment whenever there are qualified AFMs to meet the post's employment needs.

b. All positions must be advertised for at least two weeks (14 calendar days) from the date of announcement to the closing date to permit interested applicants sufficient opportunity to apply. The announcement must be given the widest possible publicity such as advertising in official post publications or posting in one or more public areas frequented by dependents.

c. The announcement must include the opening and closing dates, position title, class levels, brief description of the duties, the eligibility criteria (AFM and/or residents), qualifications desired and any selective factors which limit eligibility. These selective factors may include language requirements, clerical skill levels or AFM status. The Personnel Officer and/or the supervisor identifies the knowledge, skills or abilities needed to perform the duties of the position.

d. Applicants must submit Standard Form 171, Application for Federal Employment, and any documentation required by the announcement, such as performance appraisals. Any individual, whether or not already employed by the post, may apply under an announcement. Employees are to be given every opportunity for advancement and may not be excluded from consideration on the basis of their current employment status.

e. Posts announcing the same type of position on a regular basis because of recurring vacancies may publish Open Continuous Announcements for the same types of positions at a particular class level. For example, there could be separate announcements for Consular Assistant FP-08 or Secretary AF-EE.

Once the announcement is advertised, applications can be accepted at any time and held as a group pending review by the Post Employment Committee for a specific vacancy. The committee is not required to notify candidates that a list is being prepared for selection, only that the candidates have been considered but not selected for the position. Although applicants would not have to be security cleared to apply for these announcements, they must be cleared prior to appointment if the position requires a clearance.

f. In the case of a bona fide staffing emergency, appointments for a maximum of 21 calendar days may be made noncompetitively (without posting a job announcement). Such appointments may not be extended or renewed and must be terminated after 21 days. No exceptions to this rule will be granted. These appointments must be made in accordance with the proper security clearance procedures.

State only: Post must cable the appointment and termination SF-52's to the bureau's executive office at the same time.

3 FAM 123.8-4 Post Employment Committee

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. To ensure equity in the selection process, a permanent Post Employment Committee must be established to review applications systematically to identify and refer the best qualified candidates to the selecting official. Written guidelines for the committee must be developed and readily available to employees. The written policy may accommodate local employment conditions which do not contradict this regulation.

b. The committee should be chaired by a permanent member, either the Personnel or Administrative Officer. Ad hoc members may include members of the agencies serviced by the post personnel office, a member of the office in which the vacancy is located, an employee who holds position similar to the vacancy or any other neutral members who can provide information concerning the position responsibilities. The immediate supervisor of the position may also be a member of the committee.

c. The Personnel Officer screens the applications to eliminate those candidates who are either ineligible or do not meet the minimum qualifications for the vacancy. Only those candidates determined to be both eligible and basically qualified are referred to the committee. The list of candidates and the job requirements are then considered by the committee.

d. The qualified candidates are evaluated by the committee against the job requirements shown on the vacancy announcement. Candidates are not evaluated against each other. If the post policy allows the committee to select the employee, the committee may conduct interviews but must do so equitably, i.e., all qualified candidates must be afforded the opportunity to be interviewed. Where the immediate supervisor has selection authority, the committee evaluates and ranks the qualified candidates. The best qualified candidates (five maximum) are then referred to the supervisor for selection.

e. If the Personnel Officer determines that only one candidate is qualified and eligible for the position, that candidate may be referred directly to the selecting supervisor unless post guidelines require review by the committee.

f. The supervisor may select an applicant based on a review of the SF-171s without conducting interviews. If interviews are conducted, all qualified candidates must be afforded the opportunity to be interviewed.

g. Status as a veteran or disabled veteran shall be considered an affirmative factor as required by section 301(c) of the Foreign Service Act of 1980, as amended.

h. State only: The Community Liaison Office Coordinator will be selected by the Post Employment Committee. The committee's selection is then sent to the COM for approval.

i. AFMs on the best qualified list will be given preference over residents, i.e., if an AFM is on the list of best qualified candidates, a resident may not be selected. AFMs must be on the best qualified list to be given preference over residents. Subject to the preference guidelines, any applicant may be chosen from the list of best qualified candidates.

j. The post must maintain official records of each step of the employment process: copy of the recruitment announcement, job requirements, names of the committee members, name of the final selecting official and the selectee, and the basis for selection. These records may be destroyed one year after the selected employee leaves post.

3 FAM 123.8-5 Nepotism and Conflict of Interest

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. Administrative and Personnel Officers are required by law to ensure that the following steps are taken to prevent nepotism (see 5 U.S.C. 3110) and the appearance of or actual conflict of interest in the employment process:

(1) The selection of an applicant must be based solely on the individual's qualifications.

(2) An official who has a family member among the applicants may not participate in the selection process.

(3) Senior officials will refrain from any action which can be construed as recommending particular candidates.

(4) Employees shall refrain from recommending their own family members and shall make recommendations of other candidates only as requested or permitted by the Post Employment Committee. These recommendations must be based on the employee's personal knowledge of the applicant's work performance, ability, aptitude, general qualifications, character, or suitability.

b. While employees may never exercise supervisory responsibilities over other working members of their own family, there are some exceptions permissible for American family members. For State, particular attention is drawn to sections 3 FAM 141.6b and 141.6d; for AID, see Handbook 25, Ch. 6; for USIA, see MOA V-B 390.

For AID only: U.S. citizen employees may not be supervised by FSN employees except as outlined in section 3 FAM 922.4e.

3 FAM 123.8-6 Security Clearance and Suitability Requirements

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Temporary appointments under this regulation do not automatically require a security clearance. The security clearance requirement is determined by a post review of the duties and nature of the position and its security sensitivity, in accordance with the guidelines provided below. Sensitive positions are those which involve access to classified or other sensitive information or facilities and normally require the applicant to receive a full field background investigation prior to issuance of a security clearance. Nonsensitive positions do not have access to classified or sensitive information or facilities and do not require a security clearance. In all cases, employees will be subject to appropriate investigation to determine suitability for employment and, if required, security clearance eligibility.

The responsible security officer, using the guidance set forth below, must concur in writing in all position sensitivity designations. Positions must be recertified by the security officer whenever incumbents change to ensure that the position sensitivity designations are accurate and current. The agency office with final designation authority may override a post determination. See section 3 FAM 123.5.

All employees, including those in nonsensitive positions, must receive an appropriate security briefing as part of the initial employment orientation process.

Employees who do not hold the appropriate level security clearance may not, under any circumstances, be detailed to a sensitive position.

The following procedures are intended to ensure suitability for employment and preclude employment of persons who might constitute a threat to the security of U.S. facilities or personnel. In the event that information is developed that raises a question of suitability, the agency personnel suitability panel will determine whether the appointment may continue or must be terminated immediately.

USIA Only: The USIA Office of Security must approve all position sensitivity designations and all clearances issued by the posts. For individuals who are to occupy PIT or FSN/AFM positions, and whose sponsor has been the subject of a full-field investigation, the minimum investigation shall be verification of the sponsor's clearance, and a post-appointment NAC. For U.S. citizen residents, the minimum investigation shall be a full-field background investigation.

(A) Types of Positions Designated Nonsensitive and Sensitive

FSN/AFM positions are inherently nonsensitive and, therefore, only in unusual circumstances will security clearances be required. In such situations, posts may submit requests for exception with justification to the bureau for approval. The bureau then will forward the request along with all required completed documents to the appropriate security office for processing.

All limited noncareer appointments to Foreign Service permanent positions require a Top Secret clearance prior to appointment. Sponsor-based clearances are not authorized for limited noncareer appointments.

Generally, PIT positions are critical-sensitive unless the post security officer determines that the position is legitimately nonsensitive.

The following guidelines will be used to determine whether a position is sensitive or nonsensitive:

a. Nonsensitive positions do not entail access to sensitive areas at posts which receive, process, discuss or store classified or other foreign policy or operationally sensitive information or material. Nonsensitive work normally is performed physically apart from sensitive post facilities. Typical locations include post warehouses and annexes and may include some positions in the administrative and consular sections.

b. Sensitive positions normally include secretaries to principal officers, roving secretaries, Community Liaison Office Coordinators, positions with access to classified data processing or communications systems, and positions in any office where classified or other sensitive information is maintained, processed, or discussed.

Employees appointed to sensitive positions must receive the appropriate security clearance prior to reporting for work.

(B) Appointment to a Nonsensitive Position

AFMs and U.S. citizen residents appointed to nonsensitive positions do not require access to classified information or to areas where classified or other sensitive information is handled, stored, processed or discussed. Nonetheless, because all employees are subject to at least minimal security checks, posts must secure the approval of the responsible security officer before appointment. Appointees to nonsensitive positions shall not be allowed access to classified materials or information under any circumstances. With the approval and authorization of the responsible security officer and COM, appointees may be granted access to nonclassified, but administratively controlled, Limited Official Use (LOU) material.

Generally, AFM and U.S. citizen resident applicants for nonsensitive positions require no investigation or clearance other than embassy and local checks by the responsible security officer and certification of security suitability for such nonsensitive appointments. However, should the security officer deem further investigation advisable, a more extensive background investigation will be conducted. In this regard, less is known typically of U.S. citizen residents than of AFMs; consequently, the responsible security officer should conduct sufficient local background checks to ensure the resident's integrity, reliability and trustworthiness.

For State and Commerce only: Additionally, as a standard procedure for U.S. citizen resident appointees, while it is in no way a substitute for adequate local checks by the security officer, State will also conduct a post-appointment National Agency Check (NAC). However, posts must submit completed forms to the bureau prior to appointment:

- a. Standard Form 171, Application for Federal Employment, two copies, each signed and dated by the applicant.
- b. Standard Form 85, National Agency Check Data for Nonsensitive or Noncritical-Sensitive Position, each signed and dated by the applicant.
- c. Standard Form 87, OPM Fingerprint Chart (4-84), two copies, each signed and dated by the applicant.

Upon receipt, the bureau will submit the forms directly to the agency security office for conduct of a post-appointment NAC.

(C) Appointment to a Sensitive Position - Not Eligible for a Sponsor-based Clearance.

AFMs who are not eligible for a sponsor-based security clearance and U.S. citizen residents, whom posts wish to appoint to sensitive positions, must receive the appropriate security clearance prior to reporting for work. Clearance requests are processed in the following manner.

Posts should consult the appropriate agency regulations for specific processing requirements. At a minimum, the post must submit the following completed forms to the bureau (do not send directly to the security office):

a. Standard Form 171, Application for Federal Employment, four copies, each individually signed and dated by the applicant.

b. Standard Form 86, Security Investigation Data for Sensitive Position, four copies, signed and dated by the applicant.

c. Form FD-258, FBI Fingerprint Chart, three copies, each signed by applicant. The name of the employing agency must be entered in the ORI box on the front of the chart.

d. **USIA only:** IA-1165, Release of Information and IAP-10, Foreign Residence Data Sheet.

e. **Commerce only:** Form OM-1476, Activity Outside U.S.A., Form CSC-329a, Authority for Release of Information and Form SF-189, Classified Information Nondisclosure Agreement.

Each block on each form must be filled in either with the information requested or "no", "none" or "not applicable." Failure to complete all blocks may cause return of the form; in some cases, this will create a significant delay in processing the appointment. Falsification or omission of material facts may result in denial of appointment or separation after appointment.

(D) Appointment to a Sensitive Position - Eligible for a Sponsor-based Clearance

An AFM whose sponsor holds a Top Secret clearance based on a full field investigation may be granted a sponsor-based clearance up to the Secret level for 180 days. Extensions may be requested as necessary. This type of clearance does not waive the requirement for a full field investigation, it merely allows the post to appoint the AFM pending completion of the investigation.

The post must ensure that the security clearance request and all completed forms as indicated in section 3 FAM 123.8-6(C) are pouched to the bureau prior to the appointment. The post may request the sponsor-based clearance and appointment authority from the bureau in the same cable. The bureau will forward the information to the security office and notify the post if the clearance is authorized.

The post cable to the bureau requesting the sponsor-based clearance and appointment authorization must contain the following information and certify in item #9 that the security clearance request and required forms have been pouched:

- a. Name (including maiden and all other names used);
- b. Position title and class;
- c. Date and place of birth;
- d. Social Security number;
- e. Naturalization date, place and number, if applicable;
- f. Applicant's relationship to sponsor;
- g. Sponsor's name, date and place of birth, Social Security number, and, if applicable, naturalization date, place and number;
- h. Sponsor's employing agency and address of agency security office holding the sponsor's clearance and, if military, whether the sponsor is an officer or enlisted person; and
- i. Date the security clearance request and required forms were pouched.

After the sponsor-based clearance is authorized, the applicant may be appointed for an initial period of 180 days.

If the Top Secret clearance is not issued within the 180 day period, the post may request extensions for both the appointment and security clearance from the bureau. If either the appointment or security clearance extension is not requested or not authorized, the appointment must be terminated immediately. See section 3 FAM 123.10 for extension and section 3 FAM 123.11 for termination procedures.

3 FAM 123.8-7 Medical Examinations

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. AFMs covered under the Department of State's Medical Program and already medically cleared are not required to undergo a medical examination at post.

b. Residents and AFMs not covered by the Department's Medical Program or not medically cleared by the Department must be examined to assure that they are free of any contagious diseases. The examination is conducted by the local examining physician. The results are retained at the post and must be maintained separately from the Official Personnel File. Employees must meet the same minimum medical standards required of FSN employees.

c. Employees on limited noncareer appointments must be medically cleared (see section 3 FAM 123.12).

3 FAM 123.9 Processing Temporary Appointments

3 FAM 123.9-1 Request for Appointment Authorization

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

The post must request appointment authorization from the bureau. The request, which may be cabled concurrently with the request for a sponsor-based security clearance, must include the following:

- a. Applicant's full name;
- b. Date and place of birth;
- c. Position title and class;
- d. Expected duration of appointment;
- e. Proposed step and salary rate with supporting justification, if above step one;
- f. Date applicant passed medical examination, if required;
- g. Position security sensitivity; and
- h. Position location (budget, consular, admin section).

Upon receiving appointment and security clearance approval from the bureau, the post processes the SF-50, Notification of Personnel Action.

For State only: The post sends a telegraphic SF-52, Request for Personnel Action, to the bureau prior to the effective date of the action. The bureau authorizes the SF-52 and forwards it to PER/MGT/OS which produces the SF-50 and distributes all copies. The post must enter all information necessary on the SF-52. Failure to provide complete and accurate information may cause delays which adversely affect the payroll process.

3 FAM 123.9-2 Determining Basic Salary

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

(A) Initial Appointment

An employee's salary is set at step one, or minimum rate, of the classified class of the position. Subject to the administrative discretion of the bureaus, there are three exceptions which allow for a higher rate within the class level of the position. Management use of the following exceptions is discretionary and depends on both availability of funds and organizational needs. Employees are not entitled to advanced hiring rates. If an employee receives an appointment and is erroneously paid at a rate higher than step one, the excess amount must be collected from the employee.

(B) Highest Previous Rate

An employee may be appointed at a salary level above step one based on the highest previous rate (HPR) earned on a prior federal government personnel appointment. The HPR is based on the rate of basic pay earned while on a regular tour of duty under one or more appointments for a continuous period (without a break in service) of at least 90 days. The number of days worked on the appointment is not an issue; the controlling factor is the number of days appointed.

The HPR may not be based on a rate received from a commissary or employee association, personal or nonpersonal services contract, a nonappropriated fund position, a position in private industry, an expert or consultant appointment, or a special rate under 5 U.S.C. 5303. Any allowances or differentials are "additional pay" distinguished from the rate of basic pay and may not be used in computing the HPR.

When an employee presents previous SF-50's documenting the HPR to the post, the bureau may authorize appointment at any step within the class of the position which does not exceed HPR. However, if the HPR falls between two steps of the class, employees may be paid at the higher rate or step. If the HPR exceeds the highest step of the class of the position, the salary rate is set at the highest step even if that results in a salary lower than the HPR. The next higher class must not be used to match the HPR.

HPR may be granted retroactively to the date of the appointment under the following conditions. If the employee claims HPR but does not have supporting documentation, the post may enter the remark on the SF-50: "Salary subject to correction upon verification of service which establishes highest previous rate." When the rate is verified, the post may process a correction action to change the salary level effective the date of appointment.

If the HPR was earned in a Foreign Service or Civil Service position, it is increased by subsequent amendments to the pay schedules. For example, highest previous rate for a former FP-04, step one appointment, is computed on the current salary rate for a FP-04, step one, not the actual salary at the time of the previous appointment.

HPR may only be used when funds are available. If the bureau certifies that funds are not available to meet HPR, the salary may be set consistent with bureau policy at any step between step one of the class of the position and the HPR. When an employee's salary is set at a rate lower than the HPR because funds are not available, the application of HPR may not be postponed and given at a later date when funds are available. Posts and bureaus must ensure that all employees are treated equitably during periods when funds are limited.

(C) Superior Qualifications Rate

An employee may be appointed above the minimum rate of the class on the basis of qualifications which are not only superior to any other candidates but clearly exceed the minimum requirements of the position. A superior qualifications rate (SQR) may be granted only when the employee possesses a combination of work experience, compensation history, education and training of such quality and duration that the post may reasonably expect enhanced performance beyond the minimum requirements. The SQR may not be based on education and training alone.

The SQR must be approved prior to the employee's entrance on duty; it may not be approved on a post-appointment basis. See section 3 FAM 123.5 for the agency office authorized to approve SQR.

A request from the post to the bureau for approval of the SQR must address the following factors in detail:

- a. The employee's superior qualifications based on a combination of prior experience, education and training in the same occupational field (a telegraphic resume may be used in lieu of an SF-171; however, it must be complete and specific). The work history must show the duties performed and the amount of compensation received for the positions which are relevant to this request. The compensation may include bonuses and fringe benefits which are substantially superior to those offered by the Government. Single contract or consulting assignments which are significantly higher than the employee's other salaries will not be considered in the context of the overall compensation history.

- b. The impact on other employees if an advanced rate is awarded, both from a post financial management and employee morale standpoint.

c. The minimum requirements of the position and, specifically, how the employee's superior qualifications exceed those requirements. The position must be classified at the FP-09 level and above. Positions on the Extended Schedule are excluded from this rate.

(D) Language Requirement Rate

Additional steps may be given if a position has an essential requirement for language proficiency. The requirement for language proficiency must be based on the following:

a. A determination that the language proficiency is a bona fide basic and elementary qualification to perform the work of the position, without reference to the language skills of an applicant or an applicant's personal desires. The determination must be made at the time the position is established or advertised. The fact that language proficiency might be helpful or advantageous to an applicant, or that an applicant already has proficiency but it is not a basic requirement of the work to be performed, will not be a consideration in the determination of the position's needs. An example of a bona fide requirement would be those instances where there are no Foreign Service National employees to serve post's needs.

b. Proficiency is in one of the "hard" languages identified as such by the Foreign Service Institute. An exception to this requirement may be made in rare and unusual circumstances when a bureau determines that language proficiency is essential to meet a particular need. For example, a need to establish a temporary position which requires an incumbent to conduct research in technical documents or review and analyze newspapers and journals in the host country language.

c. Availability of funds at the time of appointment.

The number of steps awarded is based on the position language requirement and the ability of the employee to meet that level. The position language requirement may not be increased to match an employee's language skills. Employee proficiency must be verified by appropriate testing prior to appointment. Language rates may not be used either to raise the rate of pay above the maximum step of the class of the position or in conjunction with use of the superior qualifications rate.

Position Requirement Steps Awarded

Language level 1-1	0 steps
Language level 2-2	1 step
Language level 3-3	2 steps
Language level 4-4	3 steps

If a post announces a position with a language requirement and none of the qualified applicants possess the necessary language proficiency, the post may lower the language requirement level to reach qualified applicants. However, additional steps may not be awarded after the appointment if the employee's language level increases.

Language level definitions are described in section 3 FAM 872. (For AID, see HB 28, Ch. 4).

3 FAM 123.9-3 Documentation of Personnel Action

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

The applicant must complete and submit these forms to the post administrative or personnel officer for submission to the bureau for inclusion in the Official Personnel Folder:

- a. SF-171, Application for Employment
- b. SF-61, Appointment Affidavit
- c. SF-61B, Declaration of Appointee
- d. SF-144, Statement of Prior Federal and Military Service

Uniform except State: A copy of the cable approving the appointment must be attached to the SF-50 and sent to the payrolling office to support the action.

State Only: The above forms are sent by pouch to the bureau for inclusion in the OPF. In addition, the following documents (required for OPM reporting purposes) must be completed and pouched directly to PER/MGT/OS: SF-181, Race and National Origin Identification and SF-256, Self-Identification of Medical Disability.

3 FAM 123.9-4 Official Personnel Folders

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

In all cases, the current or most recent employing agency is responsible for maintaining and retiring employees' Official Personnel Folders (OPF).

(A) State

The OPF is established and maintained in the Personnel Records and Communications Branch (PER/MGT/RR/P), Bureau of Personnel. Posts will maintain a working personnel file copy which is held for one year after employee's departure and then destroyed. All personnel information initiated at post must be sent to the bureau for distribution within five workdays. The forms are forwarded to PER/MGT/RR/P for insertion in the OPF. If an employee has prior service, PER/MGT/RR/P requests documentation to verify and credit service. The OPF is held for one year after termination of the appointment. If not reappointed within the year, the OPF is transferred to the National Personnel Records Center (NPRC) in St. Louis.

(B) AID

The OPF is established and maintained at post for a period not to exceed two years following the employee's departure from post after which the post will transfer the OPF directly to the NPRC.

(C) USIA/Commerce/Peace Corps

The OPF is established and maintained at post until the employee's permanent departure from post. At that time, it is forwarded to each agency's personnel records staff where it is held for one year. If the employee is reappointed within the year, the OPF is sent to the post. If not, the OPF is sent to the NPRC. All requests by the posts for previously established OPFs should be made to the agency personnel records staff.

(D) Agriculture

The OPF is established and maintained in the appropriate office of FAS or APHIS (see section 3 FAM 123.5-5). Post will maintain a working personnel file copy which is held for one year after employee's departure and/or termination and then destroyed. All personnel information initiated at post must be sent to the Foreign Agricultural Service for distribution within five working days. The forms are forwarded for insertion in the OPF. If an employee has prior service, the appropriate personnel office requests documentation to verify and credit service. When the employee separates, the OPF is transferred to the NPRC in St. Louis.

3 FAM 123.10 Extension of Temporary Appointments

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

(A) Due to Expiration of Sponsor-based Security Clearances

Employees who receive sponsor-based clearances are initially appointed for a period not to exceed 180 days (see section 3 FAM 123.8-6. If during that period, the employee has not received the E.O. 10450 clearance, the post must request a 180-day extension of the sponsor-based clearance and the appointment from the bureau. The request should be made at least one month in advance of the appointment expiration date.

If the extension of either the appointment or the sponsor-based clearance is not authorized, the post must process a termination action, effective on the expiration date of the appointment.

The post may request 180-day extensions until such time as a Top Secret clearance is granted or an extension is denied.

Once the Top Secret security clearance is granted, the bureau may authorize the extension of appointment not to exceed one year from the date of initial appointment.

(B) Due to Expiration of Appointment

A supervisor may request an extension of appointment through the post to the bureau for up to the initial one-year period. Any extensions after that time must be reviewed and approved by the Post Employment Committee. If approved, the post may request extensions from the bureau in one-year increments.

3 FAM 123.11 Termination of Temporary Appointments

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Appointments are subject to the needs of the service and may be terminated at any time, regardless of the expiration date specified on the appointment personnel action, if:

- a. The services of the employee are no longer needed;
- b. Funds are no longer available;
- c. The employee fails to perform satisfactorily;
- d. A required security clearance cannot be issued;
- e. There is established misconduct on the part of the employee; or
- f. For any reason post or bureau management deems such action to be in the best interests of the service.

When an agency personnel suitability panel determines that an employee does not meet suitability standards, the appointment must be terminated immediately.

Posts should inform the employee in writing two weeks before the effective date of the termination action. The notice is not a requirement and, therefore, lack of advance notification, written or verbal, does not constitute sufficient grounds for a grievance.

3 FAM 123.12 Limited Noncareer Appointment Procedures

(TL:PER-91; 5-2-88)

(State and Commerce Only)

Limited noncareer appointments may be made to those Foreign Service permanent positions either where the open assignments process has not produced qualified and available career Foreign Service personnel or when a profile reduction temporarily reduces the permanent Foreign Service incumbents. The initial appointment is for more than one year and may be extended up to a maximum of five years. The appointment must be terminated as soon as a career Foreign Service employee arrives at post to assume the duties of the position. These appointments do not confer career candidate status.

The Office of Foreign Service Career Development and Assignments (PER/FCA) for State and the Office of Foreign Service Personnel (OFSP) for Commerce approve appointment, extension, conversion, and termination personnel actions for all limited noncareer employees. The bureaus may authorize routine personnel actions such as within-class increases.

PER/FCA or OFSP may consider an AFM or resident candidate nominated by the post, once a determination is made that a career Foreign Service employee cannot be assigned to a vacancy or that other management requirements justify temporarily not filling the position with a career employee. The post identifies the candidate for the limited noncareer appointment by following the guidelines in sections 3 FAM 123.8-3 through 123.8-6 which address the vacancy announcement, Post Employment Committee, nepotism, conflict of interest, and security clearances. If PER/FCA or OFSP approves the appointment, the candidate must also meet the requirements of section 3 FAM 123.8-7, Medical Examination.

The post nominates a candidate by submitting the following forms through the bureau to PER/FCA or OFSP for consideration by the appropriate panel:

- a. Standard Form 171, Application for Federal Employment;
- b. Standard Form 86, Security Investigation Data for Sensitive Position;
- c. Standard Form 87, Fingerprint Chart, two copies; and
- d. For secretarial applicants, typing and dictation scores.

Appointments will be made at the appropriate class level based on the candidate's qualifications either at the level of the position or at a lower level commensurate with their qualifications.

3 FAM 123.13 Extension of Limited Noncareer Appointments

(TL:PER-91; 5-2-88)

(State and Commerce Only)

PER/FCA or OFSP will consider a request from the bureau to extend a limited noncareer appointment only in those cases where a career Foreign Service employee has not been assigned to the position. The bureau must submit a justification for extension to PER/FCA or OFSP for consideration by the appropriate panel.

3 FAM 123.14 Termination of Limited Noncareer Appointments

(TL:PER-91; 5-2-88)

(State and Commerce Only)

Limited noncareer appointments are subject to the needs of the service and may be terminated at any time, regardless of the expiration date specified on the appointment personnel action. If the separation is for misconduct, the

employee must be granted a hearing before the Foreign Service Grievance Board unless the employee waives in writing the right to a hearing. A limited noncareer appointment may be terminated if:

- a. A career Foreign Service employee is assigned to the position;
- b. The services of the employee are no longer needed;
- c. The employee fails to perform satisfactorily; or
- d. For any reason post or bureau management deems such action to be in the best interests of the service.

When an agency personnel suitability panel determines that an employee does not meet suitability standards, the appointment must be terminated immediately.

PER/FCA OR OFSP should inform the employee by cable two weeks before the effective date of the termination action. The notice is not a requirement and, therefore, lack of advance notification, written or oral, does not constitute sufficient grounds for a grievance by the employee.

3 FAM 123.15 Position and Class Changes

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Temporary and limited noncareer employees are appointed to specific positions and grade levels on time-limited appointments. They are not eligible, in the traditional sense of the terms, for promotion, reassignment or change to lower grade. However, the same type of movement from one position or class level to another may be accomplished by converting employees to new appointments reflecting the different position, class level, or salary. The correct nature of action for the personnel action is Conversion to...". Conversions are processed only when there is not a break in service between appointments. If a previous appointment has been terminated, either by resignation or termination action, a new appointment action is processed rather than a conversion. Employees must meet the security requirements of the new position.

(A) Conversion to Another Position in the Same Class

Movement to a different position at the same class level without a break in service is accomplished by a conversion action. Employees must compete and be selected for the position. The waiting period for a within-class increase is not affected; however, employees do require a performance evaluation for the position vacated if they occupied the position for 120 days or more.

(B) Conversion to a Higher Class Position

Employees may be appointed to positions at a higher class level by means of a conversion action. Employees must compete and be selected for positions at higher class levels, except in the following situations. Employees may be noncompetitively appointed to higher level positions when:

a. Selected under competitive procedures and appointed at a level lower than the full performance level of the position. Employees may be noncompetitively converted to the next higher level of the position as qualification requirements are met until the full performance level of the position is reached. The full performance level must be documented at the time of initial selection.

b. Additional duties and responsibilities are assigned to the current position which results in a reclassification at a higher level. The current position must be abolished and absorbed administratively in the new position.

c. New classification standards are issued which result in position upgrades.

A performance evaluation is required for the position vacated if it was encumbered for 120 days or more.

The salary of the new position is that rate which exceeds the existing rate of pay by not less than two step increases of the existing class level. If the new rate falls between two steps, the employee shall be paid at the higher step. A new waiting period for within class increase begins on the effective date of a position change to a higher class.

3 FAM 123.16 Performance Evaluations

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Evaluations are required for all employees upon completion of one year of service in the same position. Employees must also be evaluated (1) when they vacate their position or (2) when their supervisor changes, unless the appointment was for less than 120 days or a performance evaluation was completed within the past 120 days. Employees who do not receive evaluations because they have not served a minimum of 120 days in a position are considered to have performed at a satisfactory level.

All employees appointed under this regulation are evaluated on Form JF-57, Foreign Affairs Agency Performance Appraisal Report, in accordance with instructions on the form (see Appendix A). The employee receives the original. The post personnel or administrative office may retain a copy for inclusion in the administrative file and a copy must be forwarded to the bureau for inclusion in the OPF.

The post Administrative or Personnel Officer must assure that employees are evaluated within thirty days of the end of the rating period covered by the report.

For Commerce only: Performance appraisals are recorded on ITA Form 726, with one copy to the Office of Foreign Service Personnel. The employee receives the original and the post may keep a copy in the administrative file.

For Agriculture only: Performance elements and standards are recorded on Form AD-435a and b, and appraisals are recorded on Form AD-435. Such documents are prepared and processed in accordance with respective agency (FAS and APHIS) instructions/directives governing foreign service performance management.

3 FAM 123.17 Conditions of Employment

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Posts must provide employees with relevant information concerning the conditions of employment such as length of appointment, hours of work, salary, duties to be performed, and supervisory channels. This section addresses those areas of employment which generate the most interest on the part of both employees and post management. For detailed procedural instructions, the applicable 3 FAM section is referenced. Policy or interpretation questions should be addressed to the bureau or the appropriate policy office.

3 FAM 123.17-1 Work Schedules

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

(See section 3 FAM 410)

Any employee on a temporary or limited noncareer appointment may be changed from one work schedule to another. These changes are accomplished by an SF-50, Notification of Personnel Action. The nature of action reads "Change in Work Schedule".

Work schedules may be changed during the appointment as a result of an employee request and/or management decision. Management has the right to change an employee's work schedule from part-time to full-time at any time, increasing the number of hours worked, without securing the approval of the employee. Employees must request a change from full-time to part-time which management may then approve or disapprove.

Work schedules may be changed without documentation for one full pay period. Any changes beyond that time must be documented upon bureau approval by an SF-50, Notification of Personnel Action.

(A) Full-time schedule

An employee is scheduled to work 40 hours per administrative workweek with a regularly established tour of duty (hours worked each day).

(B) Part-time schedule

An employee is regularly scheduled to work not more than 32 hours per administrative workweek. If an employee regularly works in excess of 32 hours per week, the work schedule must be changed to full-time, subject to the following exception.

An employee may be regularly scheduled to work in excess of 32 hours per week in countries where Sunday is part of the regularly scheduled administrative workweek and a full-time work schedule requires the payment of Sunday differential. To avoid differential costs, employees are usually scheduled to work less than full-time. However, where it would be a hardship on the post if employees could not work more than 32 hours per week on a regular schedule, the bureaus may authorize regular part-time schedules in excess of 32 hours.

When directed by the supervisor and on an occasional basis only, a part-time employee may work in excess of the regularly scheduled workweek. The work schedule of an employee who on an on-going basis is directed to work in excess of the regularly scheduled workweek must be changed by personnel action to reflect the increased hours. An employee must be compensated for all hours worked as directed by the supervisor.

(C) Intermittent schedule

An employee works without a regular tour of duty. There may be pay periods where an employee does not work at all, the next pay period work part-time, the next full-time, etc. The hours of work are based on management needs. When an intermittent employee is terminated, the total number of hours or days worked during the entire appointment must be documented on the SF-50 in the Remarks section.

3 FAM 123.17-2 Leave Benefits

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Section 3 FAM 400 provides specific guidance regarding annual and sick leave, leave without pay, absence without official leave, excused absence and other absences in pay status.

(A) Annual and Sick Leave (See section 3 FAM 430 and 440)

Employees appointed for 90 days or more are eligible to accrue and use annual leave. All employees are eligible for sick leave.

(B) Leave Without Pay (See section 3 FAM 471)

All employees are eligible to request leave without pay. Careful consideration should be given to any request in excess of 80 hours. Posts must examine each request to assure the needs of the service are not jeopardized by granting an excessive amount of LWOP in relation to the anticipated length of the employee's service. Each request for LWOP in excess of 30 days must be approved by the bureau. Each approval of LWOP in excess of 80 hours requires the submission of a SF-52 in accordance with the procedures cited in section 3 FAM 123.9-1.

3 FAM 123.17-3 Retirement, Health and Life Insurance

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

(A) Retirement (See section 3 FAM 675)

Employees on temporary appointments are eligible for Social Security coverage. They are ineligible for coverage under the Foreign Service (FSRDS or FSPS), Civil Service (CSRS) or Federal Employees (FERS) retirement systems unless they move with a break in service of less than three days from an appointment under which they had such coverage. In such cases, the current retirement system coverage continues.

Employees on limited noncareer appointments participate in either CSRS or FERS. Under these guidelines, some employees must participate in FERS, others may elect to participate in either CSRS or FERS:

a. FERS participation is mandatory for employees who are:

(1) appointed with no prior federal service or

(2) appointed with a break in service of more than one year from an appointment under which they had either CSRS or FERS coverage and completed less than five years of prior federal service or

(3) appointed regardless of length of break in service subsequent to an appointment under which they had FERS coverage.

b. CSRS participation is optional for employees who are:

(1) appointed with a break in service of less than one year from an appointment under which covered by CSRS or

(2) appointed without a break in service from an appointment under which covered by CSRS or

(3) appointed with a break in service of more than one year and completed five years or more of service under CSRS.

c. Employees eligible for CSRS coverage may elect instead to participate in FERS. However, an election for FERS coverage is a one-time decision and requires mandatory participation in FERS under subsequent personnel appointments.

Employees on LWOP from an appointment under which they were making retirement contributions to FSRDS, CSRS or FERS, must continue participation in that system when appointed to either temporary or limited noncareer appointments.

(B) Health Insurance and Life Insurance

(See sections 3 FAM 696, 3 FAM 694 and FPM Supplement 870-1)

Employees on temporary appointments are not eligible for health and life insurance benefits unless appointed without a break in service of three days or more from an appointment under which they had coverage. In such cases, coverage automatically continues unless declined by written waiver.

Employees on limited noncareer appointments are eligible to elect or decline participation in health and life insurance benefits.

Employees, who are appointed during the first 365 days of LWOP from appointments under which they had Health and/or Life insurance benefits, are eligible to continue coverage unless declined by written waiver. Eligibility for coverage does not extend beyond the first year of LWOP.

3 FAM 123.17-4 Compensation Management

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Any and all changes in employee salaries will be effective the first day of the first pay period following approval of the action

(A) Within-Class Increases (See 3 FAM 222)

Within-class step increases to the next higher salary rate on the Foreign Service and the Extended Foreign Service pay schedules are authorized upon completion of satisfactory service of 52 calendar weeks for step 1 through 9; and 104 weeks for step 10 through 13. The effective date is the first day of the first pay period following completion of the waiting period. Service is computed by the number of days appointed; part-time and full-time work schedules are equally qualifying. LWOP status does not affect the completion of the waiting period.

For AID only: Credit is granted for all LWOP which does not exceed six months in the aggregate in any calendar year (see HB 26, Ch. 2).

Qualifying service toward completion of the waiting period may include different appointments with a break of no more than one year between each appointment. A new waiting period begins if the employee has a break in service greater than one year or receives an equivalent increase as a result of any salary increase, other than a cost of living adjustment to the pay schedule.

Employees appointed with a break in service of less than one year from their preceding appointment are entitled to have that service credit reflected in their within-class due date. Posts must submit supporting documentation to the approving office so that the appropriate due date may be determined.

(B) Incentive Awards (See section 3 FAM 640)

All employees are eligible for incentive awards in recognition of special acts or sustained superior performance.

(C) Meritorious Step Increases (See section 3 FAM 224 - State only)

Employees on temporary and limited noncareer appointments may be granted meritorious step increases; however, due to the limited duration of the appointments, it is usually more appropriate to use the Incentive Awards program (section 3 FAM 640).

(D) Premium Pay (See section 3 FAM 230)

Employees must receive premium pay or compensatory time off, as appropriate, for ordered overtime, Sunday, holiday and night work. Section 3 FAM 230 must be consulted before any payment is authorized as there are exceptions and exclusions to many of the provisions of the premium compensation regulations.

Overtime, night, holiday, and Sunday work should be ordered and scheduled in advance of an administrative workweek to the extent possible. Authorizing officials and supervisors should consider the personal circumstances and wishes of affected employees but when necessary due to an unusual or unforeseen business necessity may issue, revise, or terminate such an order without consulting the employee. However, the employee must be notified promptly of any change. These changes in schedules should not occur on a routine basis.

The term "regularly scheduled" has been redefined to mean work scheduled in advance of an administrative workweek, i.e., in advance of Sunday and as part of the employee's scheduled workweek. This change affects whether overtime work is considered regular or irregular (and hence when pay is mandatory or when compensatory time off may be approved or ordered), and when night shift differential and Sunday pay must be paid.

(i) Overtime

Overtime work is work performed by an employee (full-time or part-time) in excess of 8 hours in a day or 40 hours in a regularly scheduled administrative workweek. The compensation for overtime depends on whether or not the overtime is considered "regular" or "irregular". To be considered "regularly scheduled", overtime work must be scheduled in advance of an administrative workweek (i.e., in advance of Sunday) and as part of the employee's scheduled workweek. Payment in salary (limited to the GS-010/1 hourly overtime rate and the GS-015/10 biweekly pay rate) is mandatory for regularly scheduled overtime.

Either payment in salary or compensatory time off may be granted for irregular overtime (see section 3 FAM 232.6-1c). Irregular overtime is work that is not scheduled in advance as part of an employee's regularly scheduled workweek.

(ii) Sunday

Sunday premium pay is authorized for nonovertime work performed on Sundays, when the work is scheduled as part of a full-time employee's basic 40-hour workweek. The Sunday pay differential rate is equal to 25 percent of a full-time employee's hourly rate of basic pay. Part-time employees are not eligible for Sunday pay.

A full-time employee, whose regularly scheduled basic 40-hour workweek is Sunday through Thursday, is entitled to 8 hours of Sunday pay. A full-time employee, whose regularly scheduled basic 40-hour workweek is Monday through Friday, but the employee is called to duty and works during Sunday, is not entitled to Sunday pay. The hours worked on Sunday are irregular overtime and are paid at the overtime rate.

Sunday pay is not payable for any portion of the day that an employee is on annual or sick leave, taking compensatory time off, or is excused on a holiday or other nonworkday.

(iii) Holiday Pay and Holiday Premium Pay

Holiday pay and holiday premium pay are discrete pay rates for official U.S. Government holidays. Employees who work on local holidays are not eligible for holiday pay (see section 3 FAM 465.3j).

a. Holiday pay is basic compensation for a legal holiday which falls on a day the employee (including a part-time employee) is regularly scheduled to work. The employee is given the day off, without charge to annual leave, and is paid for the day as if the work was performed. This, of course, is not a premium pay rate. The employee must be in a pay status the day before or the day after the holiday to receive holiday pay.

Care must be exercised in authorizing holiday pay for part-time employees when a holiday falls on a day the employee is regularly scheduled to work. A part-time employee receives holiday pay only for those hours regularly scheduled to work. For example: a part-time employee is regularly scheduled to work Tuesday through Friday, 8:15 am to 3:00 pm. If the holiday is Friday, the employee receives 6 hours of holiday pay. If the holiday is Monday, the employee does not receive holiday pay. If the holiday is Monday, and the employee works 8:15 am to 3 pm, the employee is paid basic compensation.

b. Holiday premium pay is a special premium differential paid to full-time and part-time employees for nonovertime work actually performed on a holiday which falls during the employee's regularly scheduled workweek.

The holiday premium pay is computed at the same rate as the employee's rate of basic pay. Hours worked in excess of eight hours on a holiday are paid at the appropriate overtime rate. Hours worked on a holiday outside the employee's regularly scheduled shift are also paid at the appropriate overtime rate (so long as the hours are in excess of 8 hours in a day or 40 hours in a week).

c. For the purposes of holiday and holiday premium pay examples, whether an employee is part-time or full-time is irrelevant. The regularly scheduled tour of duty for the day on which the holiday falls is the critical factor for determining whether an employee is paid at holiday or holiday premium pay for work performed on the holiday.

For example, an employee's regularly scheduled tour of duty includes 8:15 am to 4:00 pm on Friday, the day on which the holiday falls. On Friday, the employee is ordered to report for duty at 10 am and work until 3 pm. The employee is entitled to 5 hours of holiday premium pay (10 am to 3 pm) for working during the regularly scheduled tour on a designated holiday in addition to 7 hours of holiday pay.

Another employee's regularly scheduled tour of duty includes 8:15 am to 5:00 pm on Friday, the holiday. The employee is ordered to report for duty on Friday and works from 6:15 am to 11:15 am. The employee is entitled to two hours of irregular overtime pay (6:15 to 8:15 am) and three hours of holiday premium pay (8:15 to 11:15 am) and 8 hours of holiday pay (8:15 am to 5 pm). The two hours worked between 6:15 and 8:15 am are outside the regular tour and are overtime work. The three hours of holiday premium pay are for hours worked on a holiday for which the employee was regularly scheduled. The eight hours of holiday pay are for the hours the employee was regularly scheduled to work but did not due to the holiday.

d. Some holidays are observed on designated days rather than the actual legal holiday. Hours worked on a legal holiday as opposed to the designated holiday are compensated at overtime rates. For example, Christmas falls on Saturday but is observed on Friday, the designated holiday. If a full-time employee, regularly scheduled to work 8:15 am to 5:00 pm on Monday through Friday, is called to duty on Saturday, the legal holiday, there is no entitlement to holiday premium pay. The hours worked on Saturday are irregular overtime.

(iv) Night Shift Differential

Night shift differential is pay at the rate of 10 percent of the employee's rate of basic pay. Night pay is authorized only for regularly scheduled work performed between the hours of 6:00 p.m. and 6:00 a.m. Thus, employees scheduled in advance of the workweek to work between 6 p.m. and 6 a.m. qualify for the 10 percent differential even if the new work schedule is not permanent or typical of past workweek schedules. However, an employee suddenly assigned to perform overtime work at night after the work week has begun, even if on an organizationally established night shift, would not receive the night shift differential because the work was not regularly scheduled.

(E) Pay Adjustments (See section 3 FAM 221)

Employee basic salaries will reflect adjustments made under the Pay Comparability System (5 U.S.C. 5301) for the Foreign Service and General Schedule salary rates and to adjustments to the U.S. minimum wage rate (5 CFR 551.301). All pay adjustments are published in updates of section 4 FAM 545.

(F) Compensation for Reemployed Annuitants (See 3 FAM 125)

Employees on temporary and limited noncareer appointments who are receiving a retirement annuity from the Federal Government must have their earnings adjusted in accordance with the laws governing that retirement system.

(i) Foreign Service Annuitants

The maximum amount an annuitant may earn during the appointment year is the larger of these two computations: (a) subtract the annuity from the maximum basic salary payable for the position and (b) subtract the annuity from the basic salary the annuitant was earning at the time of retirement. The annuitant may earn the larger of these amounts; that figure is the maximum basic salary the annuitant may earn during the appointment year without affecting the annuity.

The exact number of hours or days that the annuitant may be paid for during the appointment year is determined by dividing the amount to be earned by the hourly rate of the position to which the annuitant is being appointed. For example, an annuitant is appointed to a position with an annual salary of \$30,000, was earning \$50,000 at the time of retirement, and is receiving a \$28,000 annuity. Compare the salary of the position minus the annuity (\$2,000) with the salary at the time of retirement minus the annuity (\$22,000). In this example, the maximum amount which the annuitant may be paid for during the year is \$22,000. Divide the \$22,000 by \$14.37, the hourly rate of the position (\$30,000 divided by 2087). The employee may be paid for a total of 1530 hours during the year.

The appointment personnel action must be annotated in the remarks section with the date of retirement from the Foreign Service and the salary being earned at the time of retirement.

(ii) Civil Service Annuitants

Subtract the annuity from the annual salary of the position to which that annuitant is being appointed. Divide the difference by 2087 hours. That result is the hourly rate the annuitant receives on the appointment. For example, the annual salary of the position is \$30,000, the annuity is \$28,000, the hourly rate of the position is \$14.37. Subtract \$28,000 from \$30,000: \$2,000 may be earned on the appointment. Divide \$2,000 by 2087 hours: the employee is paid at a rate of \$.95 per hour and must work full-time for the year to earn the \$2,000.

The appointment personnel action must be annotated in the remarks section with the employee's annuity.

3 FAM 123.17-5 Allowances and Differentials

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Employees on limited noncareer appointments are eligible for those allowances and differentials for which they meet the qualifying criteria.

Uniform except State and A.I.D.: Temporary full-time employees are eligible for danger pay and post allowance. Temporary part-time employees are eligible for danger pay only. Payment of allowances is dependent on availability of funds.

For State Only: Temporary full-time and part-time employees are eligible for danger pay. Temporary part-time employees are not eligible for post allowance. Temporary full-time employees are not eligible for post allowance unless a post-specific exception has been authorized. The Director General may approve post allowance for full-time employees where a bureau requests relief from rare and unusual compensation issues which adversely affect a post's ability to meet staffing requirements.

For A.I.D. only: AFM appointees are eligible for danger pay. They are not eligible for any other allowances or differentials authorized under the Standardized Regulations.

3 FAM 123.17-6 Grievances (See section 3 FAM 660)

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

Employees may use the grievance system to seek correction of any act, omission or condition which allegedly deprived them of a right or benefit to which they are entitled. Former employees and, in the case of death, family survivors, may also file a grievance but only with respect to alleged denial of an allowance, premium pay or other financial benefit to which the employee claims entitlement.

Some issues are non-grievable. The following list of examples is not exclusive:

- a. Termination of appointment; however, if the termination was allegedly the result of discrimination, the employee may file an EEO complaint.
- b. Non-selection from a list of best qualified candidates.
- c. Management decision to cancel announcement or return the best qualified list to the Post Employment Committee with a request for additional candidates.
- d. Management decision to fill an FSN/AFM position with a foreign national instead of an AFM.

e. Denial or revocation of a security clearance.

3 FAM 123.17-7 Medical and Health Program (See 3 FAM 680)

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. All employees are authorized use of the post medical unit to include immunizations.

b. Employees on temporary appointments are not eligible for coverage under the medical program, except for those AFMs whose sponsors are covered by the Department of State's Medical Program. Such employees are eligible for benefits on the basis of their status as dependents. AFMs, whose sponsors are not covered under the Department's medical program, and U.S. citizen residents are not eligible to participate in the program.

c. Employees on limited noncareer appointments are covered under the Department's Medical Program (see section 3 FAM 123.8-7)

3 FAM 123.17-8 Compensation for Disability or Death (See 3 FAM 689)

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

a. Employees are eligible for compensation for disability or death which results from injuries sustained in the performance of official duties (5 U.S.C 8101-8150). Compensation claims for disability require that the employee or someone acting in the employee's behalf notify the official supervisor in writing within 48 hours of the injury. The compensation claim must usually be filed within 30 days of the injury. Compensation claims for death benefits must be made within one year of death.

3 FAM 123.17-9 Concurrent Personal or Nonpersonal Services Contracts

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

(State Only)

(See section 3 FAM 171)

Employees, including those in LWOP status, may not accept or enter into USG personal or nonpersonal services contracts while serving on personnel appointments (see section 3 FAM 171.2b and FAR 1.603). The personnel appointment must be terminated before such contract service may begin. This restriction does not apply to appropriate employee association contracts.

3 FAM 123.18 Eligibility under E.O. 12585

(TL:PER-91; 5-2-88)

(Uniform State/AID/USIA/USDA/ Commerce/Peace Corps)

AFMs appointed under this regulation accumulates creditable service under E.O. 12585 which provides non-competitive eligibility for appointment to career Civil Service positions. Employees become eligible upon completion of 18 months service within a ten-year period after January 1, 1980 on appointments to overseas appropriated fund positions.

Employees who satisfy the Executive Order requirements are eligible for direct hire by Government agencies to positions for which they are qualified. This direct hire eligibility allows both the employee and the hiring agency to bypass Civil Service registers. Employees may apply directly to agencies and, if qualified, may be selected and appointed.

The Executive Order should be consulted for specific eligibility requirements; however, the general concepts are:

a. Family members must be U.S. citizen dependents of military and other U.S. Government employees to include both appropriated and nonappropriated fund employees.

b. The family member may reside in an overseas area while their sponsor is officially assigned to another overseas post of duty. The family member does not have to physically reside with the sponsor at all times.

c. The length of service requirement is based on the number of calendar days appointed, not number of hours or days worked. Service days are counted from the first to the last day of each appointment. Service in LWOP status is creditable.

d. The employee's eligibility for noncompetitive appointment expires three years after returning to the States.

e. Exceptions are not made for employees who are lacking one or two days toward the length of service requirement.

Employees should be urged to keep copies of every personnel action to prove eligibility when applying for Civil Service positions upon their return to the U.S.